



Patent  
AF\$

Attorney Docket No. 1021238-000414

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of )

William R. Sweeney )

Group Art Unit: 3622

Application No.: 10/729,968 )

Examiner: Akiba K. Robinson Boyce

Filed: December 9, 2003 )

Confirmation No.: 2214

For: MODEL-BASED PROMOTION AND )  
PRICE COMPUTATION SYSTEM )  
AND METHOD )

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants request review of the final rejection of Claims 1-46 in the above-identified application. No amendments are being filed with this Request. For at least the following reasons, withdrawal of the outstanding rejections is respectfully requested. This Request is being filed with a Notice of Appeal and a One-Month Extension of Time.

**Overview**

A. Claims 1-10, 15, 16, 31-33, 44 and 46 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Schroeder (U.S. Patent Application Publication No. 2003/0130883).

B. Claims 11-14 and 34-39 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Schroeder in view of Teicher (U.S. Patent No. 5,933,813).

C. Claims 17-20 and 40-43 stand rejected under 35 U.S.C §103(a) as allegedly unpatentable over Schroeder in view of Kanojia (U.S. Patent No. 6,845,396).

D. Claims 21-25 and 45 stand rejected under 35 U.S.C §102(b) as allegedly anticipated by Teicher and further in view of Schroeder.

E. Claims 26-30 stand rejected under 35 U.S.C §103(a) as allegedly unpatentable over Teicher, as applied to Claim 21, in view of Kanojia.

The rejections should be withdrawn for the following reasons:

A. **Schroeder Does Not Disclose or Suggest All Features of Claims 1-10, 15, 16, 31-33, 44 and 46**

Claim 1 recites a method comprising (1) a manufacturer providing promotion information to be considered in developing the promotion and price computation model, (2) a retailer providing price determination parameters to develop the promotion and price computation model, (3) developing the promotion and price computation model from the promotion information provided by the manufacturer and the price determination parameters provided by the retailer to implement a promotion, and (4) auditing of improperly implemented promotions.

Claim 31 recites a method comprising (1) receiving promotion information to be considered in developing a promotion and price computation model, (2) receiving price determination parameters to develop the promotion and price computation model, (3) developing the promotion and price computation model from the received promotion information and the price determination parameters to implement a promotion, and (4) auditing of improperly implemented promotions.

The Patent Office must provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" and not "mere conclusory statements." *KSR Int'l Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (U.S. 2007) (quoting *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006)). Rationales include: (1) simple substitution of one known element for another to obtain predictable results, (2) use of known technique to improve similar devices in the same way, (3) applying a known technique to a known device ready for improvement to yield predictable results, (4) choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success, (5) known work in one field that prompts variations of it for use in either the same field or a different field based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill and some teaching, (6) suggestion or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teaching to arrive at the claimed invention. The Official Action must also show that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function. "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*," 72 Federal Register 195 (10 October 2007), pp. 57526 -57535.

The Official Action rejected Claims 1 and 31 as allegedly obvious over Schroeder because Schroeder discloses entering administrative information to document changes for purposes of future auditing in the business planner system (paragraph [0110]). However, Schroeder fails to disclose or suggest anything concerning improperly implemented promotions.

Schroeder discloses a method and business planner system that predicts the outcomes of various proposed promotions of a product (paragraph [0077]). The business planner system permits a retailer or remote sales staff member to experiment with a variety of scenarios to predict the benefit of alternate promotions (paragraph [0056]). The sales staff representing a manufacturer develops a promotion plan for a given time period. The proposed promotions are entered in a computer program that runs a model based on a prediction of increased sales to determine a set of promotion conditions. The tool uses historical databases of sales for a variety of promotion conditions at specific retailers and predicts how plan promotions will affect sales in a particular store (paragraphs [0057]-[0058]). Whether or not a store would implement a particular promotion, there is no discussion in Schroeder of how to implement the promotion must less monitor when a promotion is improperly implemented.

In this case, the Official Action fails to show that all the claimed elements were known in the prior art, as required, because Schroeder does not disclose or suggest auditing improperly implemented promotions. While an administrator may enter administrative information for the purpose of future auditing there is no discussion in Schroeder of what such auditing would encompass. There is no discussion in Schroeder of ways to improperly implement any promotions and clearly no discussion of ways to audit improperly implemented promotions.

Thus, because all of the claims elements were not known in the prior art, independent Claims 1 and 31 and the claims dependent thereon are patentable over Schroeder.

**B. Schroeder and Teicher Do Not Disclose or Suggest All Features of Claims 11-14 and 34-39**

Claims 11-14 depend indirectly from Claim 1 and Claims 34-39 depend indirectly from Claim 31, which the Official Action alleges are obvious over Schroeder as applied above to independent Claims 1 and 31 in view of Teicher. As Teicher is only applied to cure

deficiencies of Schroeder to meet dependent claims, Teicher fails to cure the deficiencies of Schroeder as to Claims 1 and 31.

C. **Schroeder and Kanojia Do Not Disclose or Suggest All Features of Claims 17-20 and 40-43.**

Claims 17-20 depend indirectly from Claim 1 and Claims 40-43 depend indirectly from Claim 31, which the Official Action alleges are obvious over Schroeder as applied above to independent Claims 1 and 31 in view of Kanojia. As Kanojia is only applied to cure deficiencies of Schroeder to meet dependent claims, Kanojia fails to cure the deficiencies of Schroeder as to Claims 1 and 31.

D. **Teicher and Schroeder Does Not Anticipate Claims 21-25 and 45**

Independent Claim 21 recites a system comprising (1) a sales controller in communication with a retailer and a manufacturer, (2) a sales device in communication with the retailer and the sales controller, (3) the sales controller configured to receive promotion information from the manufacturer and the price determination parameters from the retailer to calculate a retail price and implement a promotion, (4) the sales device configured to receive the retail price from the sales controller and (5) the sales controller configured to audit improperly implemented promotions and send audit reports to the manufacturer.

The Official takes the position that Claim 21 is anticipated by Teicher, but alleges that it would have been obvious to modify Teicher to include a sales controller configured to audit improperly implemented promotions and send audit reports to the manufacturer, as allegedly taught by Schroeder. The 102(b) rejection is improper since the Official Action proposes to modify Teicher. Further, as explained above, Schroeder is completely silent regarding improperly implemented promotions. As such, the combination of Teicher and Schroeder cannot suggest all of the claimed elements.

Claim 45 recites that the system determines whether a promotion has been improperly implemented on the basis of a contract violation. Neither Teicher nor Schroeder disclose a system that determines whether a promotion has been improperly implemented on the basis of a contract violation. As such, the combination of Teicher and Schroeder fails to produce all of the elements in Claims 45.

**E. Teicher and Kanojia Do Not Disclose or Suggest All Features of Claims 26-30**

The Official Action takes the position that Claims 26-30, which depend indirectly from Claim 21, are obvious over Teicher as applied to Claim 21, in view of Kanojia. As Kanojia is only applied to cure deficiencies of Teicher to meet dependent claims, Kanojia fails to cure the deficiencies of Teicher as to Claim 21.

**Conclusion**

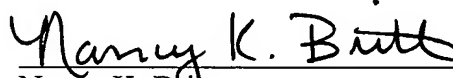
For at least the foregoing reasons, Applicants respectfully submit that all pending claims are allowable, and this application is in condition for allowance. Accordingly, Applicants request a favorable examination and consideration of the instant application.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: May 27, 2008

By:



Nancy K. Britt

Registration No. 57,856

P.O. Box 1404  
Alexandria, VA 22313-1404  
(703) 836-6620